

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/09/2002

CORAM

THE HONOURABLE MR.JUSTICE K.GNANAPRAKASAM

CRP.No.1299 OF 1998

and

CMP.No.6340 of 1998

1. S. Devaraj

2. D. Balasundaram Petitioners

-Vs-

1. UCO Bank,
Mount Road Branch
730, Anna Salai
Chennai 6.

2. Soundararajan Respondents

Prayer: petition filed against the dismissal order dated 13.01.1998,
passed by the Presiding Officer of the Debts Recovery Tribunal at Chennai in
Interim Application No.421 of 1997 in Transfer Application No.68 of 1996.

!For Petitioners : Mr.R.Shankaranarayanan

^For Respondents : Mr.Srinath Sridevan for R1
Mr.V.S.Subramaniam for R2.

:ORDER

The defendants 2 and 4 in the original suit filed by the UCO Bank in
CS.No.669 of 1987 before this Court, are the revision petitioners.

2. The first respondent/ UCO Bank filed the suit against the
petitioners and others in CS.No.669 of 1987 before this Court for directing
the defendants to pay certain amount being the cash credit outstanding
together with interest thereon and also in respect of term loan outstanding,
bills purchase outstanding, advance bills purchase account outstanding etc.,
and the said suit was filed in the month of August, 1987.

3. The defendants have filed the written statement in the month of

March, 1988. During the pendency of the suit before this Court," Recovery of Debts Due To Banks and Financial Institutions Act, (Act 51 of 1993)" was enacted by the Parliament and as per Section 1(3) of the said Act, it shall be deemed to have come into force on the 24th day of June, 1993.

4. As per Section 31 of the Act,

"Every suit or other proceedings pending before any Court immediately before the date of establishment of a Tribunal under this Act, being a suit or proceedings the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on the date to such Tribunal."

5. In accordance with Section 31 of the said Act, the suit in CS.No.669 of 1987 which was pending before this Court was transferred to the Debts Recovery Tribunal and renumbered as Transferred Application No.68 of 1996.

6. At that point of time, the Debts Recovery Tribunal did not have power to deal with the counter claims made by the defendants in a suit. But, however, the defendants have filed an application in A.No.421 of 1997, praying the Tribunal to decide all the issues or refer the entire claim or relegate the parties to the Civil Court. It is stated in the petition filed by the defendants that the defendants filed the written statement in the suit resisting the suit claim which they are not liable for the suit claim and also filed a counter claim for certain amount before the High Court and necessary Court fee was also paid for the counter claim and that the suit was transferred to the Tribunal as per Act 51 of 1993; that the Act has provided for considering the claim of Banks and Financial Institutions alone and claim by Borrower or Customer of such Banks or Financial Institutions or counter claim is not brought within the ambit of the provisions of the Act and in the said circumstances, Tribunal cannot consider the counter claim of the defendants. It is also stated that the suit and the counter claim have to be tried and dealt with appropriately. But the Tribunal directed the applicant to obtain appropriate order from the High Court regarding the jurisdiction of the Tribunal to entertain the counter claim; that in the meanwhile, the plaintiff filed proof affidavit and the matter was likely to be taken up for final disposal and in the said circumstances, the defendants have filed the said application stating that all the pleas raised by the defendants in the written statement have got to be heard and decided together and the Tribunal cannot consider the claim of the plaintiff Bank alone and bifurcate the counter made by the defendants to be adjudicated in a different Court.

7. The plaintiff has resisted the said petition by filing a counter stating that the Tribunals were empowered only to decide the claims by the banks and financial institutions and they do not have jurisdiction to try the claims against the banks and financial institutions.

8. The Tribunal after taking into consideration the argument advanced on behalf of the bank as well as the defendants, came to the conclusion that the counter claim made by the defendants is not based on the same cause of action, but it is based on some separate cause of action which is out of the

ambit of the Debts Recovery Tribunal Act and that since the counter claim has also been filed in the suit before the High Court, when the suit was transferred to Debts Recovery Tribunal as per Section 31 of the Debts Recovery Tribunal Act, the counter claim also transferred along with the suit. It does not mean that the counter claim is made before the Debts Recovery Tribunal and by observing so, dismissed the application filed by the defendants. Aggrieved by the same, the defendants have preferred this Civil Revision Petition.

9. The learned Advocate for the petitioners would contend that at the time when the suit was filed before this Court, the defendants have filed the written statement in March, 1988 itself and at that time, the Act itself was not conceived and as a matter of fact, the Act came into force only in the year 1983 and that therefore, the counter claim filed by the defendants in the suit which was pending before this Court should be considered along with the suit and if that be so, it would lead to an anomalous situation which would not only prejudice the case of the defendants, but the defendants also would be driven to the necessity of taking the trial before the Debts Recovery Tribunal, as per the claim of the Banks are concerned and would be driven to the necessity to put forward or proving the counter claim before some other forum and that cannot be countenanced and that it be so, the defendants right to put forward the defence will be jeopardised. That apart, it is stated that the defendants are relying upon the documents which were common in support of the defence raised by them and also in respect of the counter claim made by them and if the suit is split up and trial is taken up before the Debt Recovery Tribunal only with regard to the claim made by the bank and if the defendants are directed to put forward their counter claim before any other Civil Court, the defendants will not be able to project their case and it would naturally defeat the ends of justice also. It is also further argued that the defendants have made their counter claim, when the suit was pending before this Court and also before coming into force of the RDB Act.

10. It is also pointed out by the learned Advocate for the revision petitioners that after the passing of the order by the Tribunal, Section 19 had undergone several changes and as per the amended Section 19, Sub Clause 6,8,9,10 and 11 enable the Tribunal to adjudicate upon the counter claim and also the objections if any, that would be raised by the applicant namely, the bank. This amendment came into effect on and from 17.01.2000. The said position is not denied by the learned Advocate for the first respondent/plaintiff bank also.

11. In view of the amendment came into being on and from 17.01.2000, it has become unnecessary for this Court to give a finding whether the order passed by the Debts Recovery Tribunal on 13.01.1998 is legal or that has got to be upheld. The learned Advocate for the first respondent bank has submitted that under Subsection (11) of Section 19, the applicant has got every right to oppose the counter claim that is made or that would be made by the defendants. In the said circumstances, the Debts Recovery Tribunal is empowered to consider the counter claim of the defendants and also the objections if any that would be raised by the applicant as provided under Subsection (11) of Section 19 of the Debts Recovery Tribunal Act.

12. In the result, the Civil Revision Petition is disposed of with the above observation. Consequently, connected CMP is closed. As the matter relates to the year 1987, the Debts Recovery Tribunal is directed to dispose of the Transferred Application No.68 of 1996 as expeditiously as possible. No costs.

26.09.2002

Index:yes

Internet:yes

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